

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---------------------------------|---|-----------------------|
| COMCAST CABLE COMMUNICATIONS, |) | |
| LLC; COMCAST OF RICHARDSON, LP; |) | |
| COMCAST OF PLANO LP; COMCAST OF |) | |
| DALLAS, LP, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | C.A. No. 06-407 (KAJ) |
| |) | |
| USA VIDEO TECHNOLOGY CORP., |) | |
| |) | |
| Defendant. |) | |

**COMCAST’S OPPOSITION TO USA VIDEO’S
MOTION TO DISMISS, STAY OR TRANSFER**

Comcast Cable Communications, LLC; Comcast of Richardson, LP; Comcast of Plano, LP; and Comcast of Dallas, LP (collectively, “Comcast”)¹ oppose the Motion to Dismiss, Stay or Transfer filed by USA Video Technology Corporation (“USA Video”).

ARGUMENT

On August 31, 2006, cognizant of Judge Jordan’s nomination to the Court of Appeals for the Third Circuit, Judge Clark of the United States District Court for the Eastern District of Texas denied Comcast’s motion to transfer USA Video’s patent infringement lawsuit to this Court. While we acknowledge that in light of that nomination, this Court’s interest in this

¹ As stated in The Comcast Plaintiffs’ Answer and Affirmative Defenses to USA Video Technology Corporation’s Counterclaim filed on August 30, 2006 (Court Docket No. 16), it appears that as a result of a transaction involving Adelphia Communications Corporation and pursuant to public records, Comcast of Dallas, LP is now listed as “TimeWarner Cable of Dallas, LP,” while Comcast of Richardson, LP and Comcast of Plano LP are listed as inactive. For purposes of this opposition, however, the named plaintiffs will be collectively referred to as “Comcast.”

case may be fleeting, we respectfully submit that this case can be efficiently, expeditiously and summarily disposed of by this Court in light of the Court's prior experience with the patent at issue and previous efforts to learn the relevant technology.

First, this case involves the same patent – U.S. Patent No. 5,130,792 (“the ‘792 patent”) – asserted against “video on demand” (“VOD”) technology, which the Court previously addressed in the *Movielink* case (*USA Video Technology Corporation v. Movielink, LLC*, C.A. No. 03-368-KAJ). In that case, the court construed the claim term “initiates” and granted Movielink’s motion for summary judgment of non-infringement based upon that construction. In its current motion, USA Video incorrectly argues that this Court’s construction of the ‘792 patent term “initiates” in the *Movielink* case “is not applicable” to this case. USA Video Br. at 3. While no one contends that the Comcast and Movielink VOD systems are identical in all respects,² this Court’s prior consideration of the ‘792 patent and determination on summary judgment that Movielink does not infringe the patent remains pertinent. *See USA Video Tech. Corp. v. Movielink LLC*, 354 F. Supp. 2d 507 (D. Del. 2005), *aff’d* 2006 U.S. App. LEXIS 14699 (Fed. Cir. Jun. 7, 2006).

For example, the Court’s *Movielink* opinion quotes and summarizes three non-infringement arguments presented by Movielink, and concludes that the “second argument is dispositive”, namely:

² Comcast’s VOD systems are cable-television based, while Movielink’s were Internet-based. This, however, does not detract from the relevance of the Court’s conclusions. The ‘792 patent claims in fact are directed to *switched phone networks*, which are different altogether. If anything the cable-based nature of Comcast’s systems provides additional independent grounds for non-infringement: indeed the ‘792 patent expressly mentions and *dismisses* dedicated cable systems in its background section (‘792 patent at 1:33-37).

Second, in the Movielink system, it is the “download” button on the consumer’s home computer that “initiates” the download of the requested movie – not any ‘distribution interface’ residing in Movielink’s facilities.

Id. at 515. Here, as in the Movielink system, in Comcast’s systems it is the consumer/subscriber at home who initiates the transmission of VOD content with their set top box remote control. *See* accompanying Ex. A (www.comcast-ne.com/vod.html, informing “OnDemand” users as follows: “Using your remote control, you can order the program . . . Select Yes to confirm and a thank you notice will appear. Your selection will start momentarily.”).

Moreover, the Court’s reasoning in the *Movielink* case was partly based on USA Video’s assertions to the U.S. Patent & Trademark Office during prosecution of the ‘792 patent, that an essential point of the ‘792 claimed invention is for a central facility to initiate VOD connections at its own convenience so that the central facility is easier to control, unlike the prior art in which movies are provided at the local user’s convenience:

The difference in the claimed system as described above and the references leads to a system which is construed on entirely different philosophical lines than in the prior art. In the prior art, *the local unit is in charge of the transaction*, ordering and receiving a program at its convenience. In the claimed system, the user merely requests a program; *the central facility [then] initiates a new connection* at its convenience and sends a program to the remote unit identified in the request. Since *the central unit is in control rather than the remote unit*, it is easier to design the central unit to make it run very efficiently.

See USA Video Tech. Corp. v. Movielink, 354 F. Supp. 2d at 514 (citing USA Video’s arguments to the U.S. Patent & Trademark Office) (emphasis in original). Here again, in Comcast’s systems VOD movies are ordered by and transmitted to subscribers upon their demand and solely at their own timing and convenience, *not* at the convenience of any central facility as in the claimed system of USA Video. *See* Ex. A (www.comcast-ne.com/vod.html, informing “OnDemand” users to “Pick a Show. Play it Whenever.”).

Thus, even if final adjudication involves some review and analysis of Comcast's systems, this Court's familiarity with the '792 patent and the VOD technology at issue will allow the District of Delaware to efficiently and expeditiously adjudicate this dispute.

CONCLUSION

For all of the foregoing reasons, the Comcast Plaintiff respectfully request that this Court deny USVO's Motion to Dismiss, Transfer, or Stay.

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September 7, 2006

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CERTIFICATE OF SERVICE

I, Maryellen Noreika, hereby certify that on September 7, 2006, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Richard K. Herrmann
Morris, James, Hitchens & Williams

I also certify that copies were caused to be served on September 7, 2006 upon the following in the manner indicated:

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EXHIBIT A

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ON DEMAND is more convenient than the video store. **And best of all, it's available on your existing Comcast Digital Cable service!**

[Click here to view an interactive Flash demo of ON DEMAND with Comcast](#)

ON DEMAND is here!

Getting started is easy. Just follow these simple instructions to access this exciting feature - instantly.

- [Changes to your On-Screen Program Guide](#)
- [How do I access ON DEMAND?](#)
- [How do I find ON DEMAND programs?](#)
- [How do I access VCR-like Functions?](#)
- [How do I prevent unauthorized orders?](#)

Changes to your On-Screen Program Guide



Over the next few days, you'll notice a new Quick Menu appears when you

EXHIBIT A

turn on your TV. Choose TV Listings, ON DEMAND or Main Menu, or simply do nothing and after a few seconds the guide will disappear.

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How do I access ON DEMAND?

There are several ways:

- Through the Quick Menu by selecting ON DEMAND
- By pressing the **MENU** button on your remote control and selecting ON DEMAND from the Quick Menu
- By accessing Channel 1 ON DEMAND in the TV Listings section

From any of these menus press the **LAST** button on your remote to return to the previous menu or press the **EXIT** button on your remote to return to watching TV.

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How do I find ON DEMAND programs?

ON DEMAND programming is organized into categories. Select a category and you'll see a list of subcategories or program listings.

PROGRAM LISTINGS

Highlight the movie or program you want to watch and press **OK/Select**.

PROGRAM INFORMATION/ORDER SCREEN

An information screen appears after you select a program. Using your remote control, you can order the program, watch a preview or restrict access with Parental Control.



- Select Order and a confirmation screen appears giving you the option to continue with the order or cancel. Select Yes to confirm and a thank you notice will appear. Your selection will start momentarily.
- If the program is available at no cost, a Watch option appears in place of the Order option.

ON DEMAND PREVIEWS*

- Watch a Free Preview before you make your purchase selection. To preview a program, select it from the listings and choose Preview on the information screen.
- To exit the Preview, press **EXIT** or **OK/Select** on your remote.

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How do I access VCR-like Functions?

You have complete control at your fingertips with features like Pause, Fast-Forward, Rewind and Stop. To access VCR-like functions, press the arrow buttons on your remote around the **OK/Select** button while you're watching.



Up arrow: Play
Right arrow: Fast Forward
Left arrow: Rewind
Down arrow: Stop
OK button: Pause

STOPPING OR PAUSING A PROGRAM

- When you **Stop** a program that is 1 hour of length or greater it will be transferred into the Saved Programs area. You will have access to most programs for repeat viewing up to 24 hours.

- When you **Pause** a program it will remain paused for approximately 5 minutes. If you do not press Play within this time, the program will be transferred to Saved Programs. Remember only programs that are 1 hour of length or greater will be saved.

RESUMING OR RESTARTING A PROGRAM

With ON DEMAND, you can Stop or Pause the program and come back to it anytime within the rental period.

- Select Saved Programs from the ON DEMAND menu to see a complete list of the titles you have selected. Highlight the program you would like to watch.
- An information screen provides details on the remaining rental time for your selection.
- Resume - starts the program at the point that you stopped
- Restart - starts at the beginning
- Delete - deletes the program from the Saved Programs list. Use the right arrow on your remote to access the Delete feature.

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How do I prevent unauthorized orders?



PARENTAL CONTROL CODES

Parental Control codes can be used with ON DEMAND to restrict viewing of certain content. Codes apply to program ratings and require a 4-digit code to be entered when accessing content that has a rating lock.

- First, set up your personal 4-digit Parental Control code through Setup on the Main Menu.
- Then, select Locks from the Main Menu to access the Parental Control screen. Use the arrow buttons on your remote to place locks on TV and movie ratings. Note that ON DEMAND programs can only be restricted by rating.
- Anytime a locked title is selected, the 4-digit Parental Control code will need to be entered.

PURCHASE CODES

To require that a code be entered every time ON DEMAND programs are ordered, set up a Purchase Code.

- Set up your Purchase Code through Setup on the Main Menu. Your 4-digit Purchase code will be required to complete any purchase.

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* Free preview not available with all titles.

Minimum subscription to digital basic programming required for ON DEMAND access. For households with Digital Cable on multiple televisions will be charged per movie ordered per set.